



CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 12-C0008]

Burlington Coat Factory Warehouse Corporation, Provisional Acceptance of a Settlement

Agreement and Order

AGENCY: Consumer Product Safety Commission

ACTION: Notice

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 C.F.R. § 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Burlington Coat Factory Warehouse Corporation, containing a civil penalty of \$1,500,000.00, within twenty (20) days of service of the Commission's final Order accepting the Settlement Agreement.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by (insert date that is 15 calendar days from publication date).

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 12-C0008, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814-4408.

FOR FURTHER INFORMATION CONTACT: Seth B. Popkin, Lead Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7612.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

July 25, 2012

(Date)

Todd A. Stevenson

Secretary

In the Matter of)
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 Burlington Coat Factory Warehouse Corporation)
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CPSC Docket No. 12-C0008

1. In accordance with the Consumer Product Safety Act, 15 U.S.C. §§ 2051–2089 (“CPSA”), and 16 C.F.R. § 1118.20, Burlington Coat Factory Warehouse Corporation (“Burlington”) and staff (“Staff”) of the U.S. Consumer Product Safety Commission (“Commission”) enter into this Settlement Agreement (“Agreement”). The Agreement and the incorporated attached Order (“Order”) resolve Staff’s allegations set forth below.

2. Staff is staff of the Commission, an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the CPSA.

STAFF ALLEGATIONS

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Evans Associates, LLC – Bay Trading hooded sweatshirts and jackets; Koman Sportswear Manufacturing Corporation – hooded sweatshirts and jackets; Fashion Options, Inc. – Beverly Hills Polo Club hooded sweatshirts; Allura Imports, Inc. – Major Diva hooded sweatshirts; Baycreek, Inc. – Attitude Gold hooded sweatshirts; Franshaw, Inc. – Blue Heart and Just a Girl hooded sweatshirts; Bobens Trading Company, Inc. – Old Skool hooded sweatshirts; Weeplay Kids, LLC – Candy Queen and AKDMKS hooded sweatshirts; Ten West Apparel, Inc. – hooded jackets; Brand Evolution LLC – All Over Locks, All Over Skaters, and Rock Mask Hooded hooded sweatshirts; Regaliti, Inc. – Betty Blue hooded jackets; Byer California – jackets; Haselson International Trading, Inc. – Kani Gold and Roadblock hooded sweatshirts; Bubblegum USA – hooded jackets; North-Sportif, Inc. – hooded jackets; Five Star Apparel – hooded jackets; Trendset Originals LLC – Shampoo hooded jackets; Hind Fashions, Inc. – Hind leather and Lil Phat hooded jackets; Lollytogs, Ltd. – Rim Rocka hooded sweatshirts; S. Rothschild & Company, Inc. – wool coats; AJS Group LLC – Apple Bottom hooded jackets; Millennium Apparel Group Inc. – Disney Winnie the Pooh hooded jackets; and Winco USA, Inc. – Sergio Benini hooded jackets. The products identified in this paragraph are collectively referred to herein as “Garments.”

5. Burlington sold the Garments, and/or held the Garments for sale, to consumers.

6. The Garments are “consumer product[s],” and, at all relevant times, Burlington was a “retailer” of those consumer products, which were “distributed in commerce,” as those terms are defined in CPSA sections 3(a)(5), (8), and (13), 15 U.S.C. § 2052(a)(5), (8), and (13).

7. In February 1996, Staff issued the Guidelines for Drawstrings on Children’s Upper Outerwear (“Guidelines”) to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused,

injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, Staff recommends that no children's upper outerwear in sizes 2T to 12 be manufactured or sold to consumers with hood and neck drawstrings.

8. In June 1997, ASTM adopted a voluntary standard (ASTM F1816-97) incorporating the Guidelines. The Guidelines state that firms should be aware of the hazards associated with drawstrings and should ensure that garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its website a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816-97. The letter states that Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act ("FHSA") section 15(c), 15 U.S.C. § 1274(c). The letter also references the CPSA's section 15(b) (15 U.S.C. § 2064(b)) reporting requirements.

10. Staff provided Burlington with multiple direct notifications of the hazards associated with drawstrings on children's upper outerwear.

11. Burlington's distribution in commerce of the Garments did not comply with the Guidelines or ASTM F1816-97, failed to comport with Staff's May 2006 defect notice, and posed strangulation hazards to children.

12. Burlington informed the Commission that there had been no reported incidents or injuries associated with the Garments.

13. The Commission, in cooperation with Burlington and/or other firms that were the Garments' manufacturers, importers, or distributors, announced recalls of the Garments.

14. Based in part on information available through the sources set forth in paragraphs 7 through 10, Burlington had presumed and actual knowledge that the Garments distributed in commerce posed strangulation hazards and presented substantial risks of injury to children under FHSA section 15(c)(1), 15 U.S.C. § 1274(c)(1). Burlington obtained information that reasonably supported the conclusion that the Garments contained defects that could create substantial product hazards or that the Garments created unreasonable risks of serious injury or death. Pursuant to CPSA sections 15(b)(3) and (4), 15 U.S.C. § 2064(b)(3) and (4), Burlington was required to inform the Commission immediately of these defects and risks.

15. Burlington knowingly and repeatedly failed to inform the Commission immediately about the Garments, as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. § 2064(b)(3) and (4), and as the term "knowingly" is defined in CPSA section 20(d), 15 U.S.C. § 2069(d). These knowing failures violated CPSA section 19(a)(4), 15 U.S.C. § 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. § 2069, these knowing failures subjected Burlington to civil penalties.

16. On repeated occasions from in or about September 2008 to January 2012, Burlington offered Garments for sale, sold Garments, and/or otherwise distributed Garments in commerce that were subject to voluntary corrective actions taken by the Garments' manufacturers in consultation with the Commission. The Commission had notified the public of those voluntary corrective actions.

17. Burlington knowingly engaged in the acts alleged in paragraph 16, as the term "knowingly" is defined in CPSA section 20(d), 15 U.S.C. § 2069(d). These knowing acts

violated CPSA section 19(a)(2)(B), 15 U.S.C. § 2068(a)(2)(B). Pursuant to CPSA section 20, 15 U.S.C. § 2069, these knowing acts subjected Burlington to civil penalties.

18. Staff denies and/or does not concur with Burlington's responsive allegations below.

BURLINGTON RESPONSIVE ALLEGATIONS

19. Burlington denies Staff's allegations above, including but not limited to any claim that Burlington failed to timely report to the Commission the sale or distribution of any children's upper outerwear products with drawstrings pursuant to § 15(b) of the CPSA, or that Burlington knowingly offered Garments for sale, knowingly sold Garments, and/or otherwise knowingly distributed Garments in commerce that were subject to voluntary corrective actions.

20. Burlington enters into the Agreement to settle this matter without the expense of litigation. Burlington enters into the Agreement and agrees to pay the amount referenced below in compromise of disputed and unproven allegations. Burlington's entering into the Agreement is not an admission of liability of any kind, whether legal or factual.

21. Burlington did not manufacture the Garments. It purchased them from vendors and other suppliers. Consistent with practice in the retail industry, Burlington contractually required the Garment vendors to supply products that complied with all federal, state, and local laws, regulations, and standards, and relied on its suppliers to provide compliant products, as the suppliers were in the best position to know and understand the many legal requirements that were or potentially were applicable to their products.

22. Since the Commission first issued the Guidelines in 1996, Burlington's children's apparel purchasing policy has prohibited Burlington's apparel buyers from purchasing children's upper outerwear with drawstrings. Prior to 2009, Burlington's management had procedures in

place that it reasonably believed prevented the purchase of children's upper outerwear products with drawstrings. Upon learning in 2009 that, despite such procedures, certain Garments had been discovered in Burlington's stores, Burlington undertook an extensive manual audit of all children's upper outerwear in all of its stores to determine whether it had unknowingly purchased other products subject to the Guidelines. This audit was a massive undertaking, as Burlington's personnel in all of its approximately 450 stores at that time had to visually inspect all items of children's upper outerwear, and the Guidelines and ASTM standard contain ambiguities that made it difficult to determine whether certain items failed to comply.

23. Prior to the audit, Burlington's product compliance and safety personnel and children's apparel buyers had no knowledge, whether actual or constructive, that the Garments actually supplied by Burlington's suppliers contained drawstrings. Burlington promptly notified the Commission pursuant to § 15(b) of the CPSA upon discovering as a result of the audit that it had purchased and sold many of the Garments.

24. Burlington is unaware of any incidents or injuries associated with the Garments.

AGREEMENT OF THE PARTIES

25. Under the CPSA, the Commission has jurisdiction over this matter and over Burlington.

26. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Burlington, or a determination by the Commission, that Burlington knowingly violated the CPSA.

27. The Agreement is a full and complete resolution between Staff and Burlington, and its parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies and their successors and assigns of all claims for civil penalties that have been or could have been

asserted based on the facts contained in Staff's allegations above, with regard to the failure to report the Garments or sale of the Garments after corrective action.

28. In settlement of Staff's allegations, Burlington shall pay a civil penalty in the amount of one million five hundred thousand dollars (\$1,500,000.00). The civil penalty shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made via www.pay.gov.

29. Burlington agrees that it will not seek or accept, directly or indirectly, indemnification, reimbursement, insurance, or any other form of compensation or payment, including, but not limited to, cash, account credit, or set-off, from any vendor or supplier from which Burlington acquired the Garments, or from any other firm or person, for the civil penalty that Burlington agrees and is ordered to pay pursuant to the Agreement and Order.

30. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). In accordance with 16 C.F.R. § 1118.20(f), if within fifteen (15) calendar days, the Commission does not receive any written request not to accept the Agreement, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the *Federal Register*.

31. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Burlington knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) an administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Burlington failed to comply with the CPSA and its

underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

32. The Commission may publicize the terms of the Agreement and the Order.

33. The Agreement and the Order shall apply to, and be binding upon, Burlington and each of its successors and assigns.

34. The Commission issues the Order under the provisions of the CPSA, and a violation of the Order may subject Burlington and each of its successors and assigns to appropriate legal action.

35. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced. The Agreement may be executed in counterparts.

36. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall

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remain in full force and effect, unless the Commission and Burlington agree that severing the provision materially affects the purpose of the Agreement and the Order.

Burlington Coat Factory Warehouse Corporation

Dated: June 29, 2012

By:

Paul Tang
Executive Vice President and General Counsel
1830 Route 130
Burlington, NJ 08016

Dated: July 3, 2012

By:

Jeffrey B. Margulies, Esq.
William L. Troutman, Esq.
Fulbright & Jaworski L.L.P.
555 South Flower Street, 41st Floor
Los Angeles, CA 90071

Counsel - Burlington Coat Factory Warehouse Corporation

U.S. CONSUMER PRODUCT SAFETY
COMMISSION STAFF

Cheryl A. Falvey
General Counsel

Mary B. Murphy
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Office of the General Counsel

Dated: July 12, 2012

By:

Seth B. Popkin
Lead Trial Attorney
Division of Compliance
Office of the General Counsel

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	
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Burlington Coat Factory Warehouse Corporation)	CPSC Docket No. <u>12-C0008</u>
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ORDER

Upon consideration of the Settlement Agreement entered into between Burlington Coat Factory Warehouse Corporation (“Burlington”) and U.S. Consumer Product Safety Commission (“Commission”) staff, and the Commission having jurisdiction over the subject matter and over Burlington, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

ORDERED, that the Settlement Agreement be, and hereby is, accepted; and it is

FURTHER ORDERED, that Burlington shall pay a civil penalty in the amount of one million five hundred thousand dollars (\$1,500,000.00) within twenty (20) calendar days of service of the Commission’s final Order accepting the Agreement. The payment shall be made via www.pay.gov. Upon the failure of Burlington to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Burlington at the federal legal rate of

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interest set forth at 28 U.S.C. § 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 25th day of July, 2012.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission

[FR Doc. 2012-18459 Filed 07/27/2012 at 8:45 am; Publication Date: 07/30/2012]